

September 14, 1950
Op. No. 50-337

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Donn Kinzle
Executive Manager, Department
of Intercollegiate Athletics
Arizona State College
Tempe, Arizona

Dear Mr. Kinzle:

We acknowledge receipt of your letter of September 1, containing the following questions:

"In order to insure adequate and efficient policing at our football games this fall, we are preparing to hire police, deputy sheriffs, highway patrol men, or whatever is necessary.

Inasmuch as we are a state institution, we are somewhat concerned over the problem of jurisdiction and we would like an opinion from your office as to what agency could best control the crowds.

We have another problem on which we should like your opinion as well: namely, the matter of any and all men in peace officers' uniforms requesting admission to our games on the basis of their uniforms alone. In most cases, these men either cannot or will not assist when a disturbance arises and do nothing more than add to the confusion. We should like to know if we can exclude from the stadium all personnel except those which are hired by us for the purpose of maintaining order."

We are basing this opinion upon the facts contained in your letter and upon the facts communicated to the writer by telephone that it is the associated students rather than the Arizona State College which conduct the football games; that the associated students have an arrangement with Arizona State College for the use of the stadium through some sort of lease or rental agreement; that the money used to pay the salaries of persons hired to police football games is that of the associated students and is not public money; that the persons hired to police the games, if they are regular peace officers, are off duty at the time their work at the football games is undertaken.

It is our opinion that the associated students may hire either police, deputy sheriffs, highway patrolmen or any other off-duty peace officers to do the policing work at your football games. We are also of the opinion that a peace officer in uniform has no right to demand free admission to your games, subject to certain exceptions hereinafter noted.

We first consider the problem of excluding uniformed peace officers without tickets from the games. Because of the fact that the football stadium is located entirely within the Tempe city limits, the mayor or other officer of the city of Tempe, having direction of the police force, could order the city police to attend the games if he were satisfied that a breach of the peace were to be apprehended. The authority for this is contained in Section 45-110 ACA 1939, which section provides:

"Preserving peace in municipalities.--The mayor or other officer having the direction of the police of a city or town shall order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace to be apprehended."

We think it unlikely that the mayor or police chief would ever apprehend that a breach of the peace was sure to be committed at a football game, although this situation is conceivable. However, in the event police officers of the City of Tempe were directed by their superior to go to the stadium for the purpose of quelling a breach of the peace, then you would have no alternative but to admit them upon a showing that they had been so sent. This is one of the exceptions which we noted above.

Another exception to the rule stated above is that a peace officer may enter a house, enclosure or other structure where the circumstances are such as to give him knowledge that a breach of the peace or other misdemeanor is being committed or attempted. An example of this would be if a riot occurred at a football game and this fact came to the knowledge of a peace officer. He could lawfully enter the stadium without a ticket to assist in restoring the peace; however, peace officers may not enter a structure or enclosure merely to place themselves in a position to observe the commission of a misdemeanor or to arrest persons in the event one is committed. Our court laid this rule down in the case of Adair v. Williams, 24 Ariz. 422, 210 P. 853. At page 432 of the State Report, the court said:

" * * * the rule deducible from these authorities and from our own statutory provisions is that, though a peace officer is authorized to enter, without invitation, a house or like structure or inclosure in private ownership, where the circumstances are such as to give him knowledge through the report of his senses that a breach of the peace or other misdemeanor is being committed or attempted, and there to arrest the offenders for such crime, such officer is not justified either in making an entry into any such place for the mere purpose of placing himself in a position where he may observe the commission of a misdemeanor or in thereupon making an arrest therefor."

We think that you may exclude these persons even though the stadium of Arizona State College in Tempe is undoubtedly a public structure, for the reason that a Board of Regents of the University and State Colleges is given the power by Section 54-1602 (a) ACA 1939 to: "purchase, receive, hold, make and take leases of, and sell property, real or personal, for the benefit of the state and the use of the institutions under its jurisdiction." It is our understanding, as indicated above, that the associated students have made arrangements for the use of the stadium; as such user they have the right to exclude, subject to the limitations above-stated, any persons they choose from admittance to the stadium.

We believe that you could hire police, sheriffs or highway patrolmen to police the games even though the stadium happened to be out of the jurisdiction in which they serve as peace officers. It is a well-known rule that peace officers as such have jurisdiction to perform their duties only within the city in the event they are city police, or the county in which they are sheriffs or deputy sheriffs in which they are appointed or elected to serve as peace officers. However, under our law and under the law generally, a peace officer, even though beyond his bailiwick, may make an arrest in certain cases, not as a peace officer, but merely as a private citizen. The rule is well stated in 4 Am. Jur., Arrest, Section 51, page 35 as follows:

"A public officer appointed as a conservator of the peace for a particular county or municipality as a general rule has no official power to apprehend offenders beyond the boundaries of the county or district for which he has been appointed. * * * Where the sheriff of a county attempts to make an arrest in another county, without a warrant, he is usually considered as having only the authority which a private person may have in apprehending criminals, * * *"

Private persons under our law are authorized to make arrests as follows:

"Arrest by private person--When lawful.--A private person may make an arrest:

- (a) When the person to be arrested has in his presence committed a misdemeanor, amounting to a breach of the peace, or a felony.
- (b) When a felony has been in fact committed and he has reasonable ground to believe that the person to be arrested has committed it." (Section 44-125, ACA 1939)

It is for these reasons that we have stated above that we believe that you could hire police, deputy sheriffs or highway patrolmen to police the football games, even though their authority to arrest might be that of only a private person.

In the event an arrest is made by a private person, his duties as to the arrested person are as follows:

"Duty of private person after making arrest.--

A private person who has made an arrest shall without unnecessary delay take the person arrested before the nearest or most accessible magistrate in the county in which the arrest was made, or deliver him to a peace officer, who shall without unnecessary delay take him before such magistrate. The private person or officer so taking the person arrested before the magistrate shall make before the magistrate a complaint, which shall set forth the facts showing the offense for which the person was arrested. If, however, the officer can not make the complaint, the private person who delivered the person arrested to the officer shall accompany the officer before the magistrate and shall make to the magistrate the complaint against the person arrested." (Section 44-141 ACA 1939)

We have restricted the above to off-duty peace officers, and it is not meant to apply to peace officers on duty and dispatched by their superiors to police the game. If they were so ordered there, it would be futile to hire them since you would be paying them for duties which they are already bound to perform, and for which they are being paid.

We might mention in regard to the holding of athletic contests by schools that our court has determined the expenditure of public moneys for athletics is a valid public charge.

Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056

Clearly, in the problem which you present, public money is not being expended, and it is not necessary to determine this question, and of course the associated students are free to spend their money as they choose, since it is not public money. We cite this rule merely to show that the ultimate purpose in renting or letting the stadium to the Associated Students is a valid public purpose.

In conclusion, we restate that it is our opinion that you may hire any and as many off-duty peace officers as you may choose to police your football games. It is further our opinion, subject to the two exceptions noted above, that you can exclude from the stadium any persons who do not present admission tickets for the purpose of gaining entrance to the stadium, and of course, if your tickets constitute mere revocable licenses, then upon the refund of the money, even ticket holders could be excluded from admittance to the stadium.

Mr. Donn Kinzle
Arizona State College
Tempe, Arizona

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We trust that this will serve to answer your inquiry, and with kindest regards, we remain

Very truly yours,

FRED O. WILSON
Attorney General

CALVIN H. UDALL
Assistant Attorney General

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